

HOUSE BILL REPORT

E2SHB 1206

As Passed House:
March 3, 2011

Title: An act relating to harassment against criminal justice participants.

Brief Description: Concerning harassment against criminal justice participants.

Sponsors: House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Dahlquist, Hurst, Pearson, Harris, Parker, Lytton, Rivers, Johnson, Taylor, Wilcox, Ross, Kelley, Ladenburg, Armstrong, Dammeier, Frockt and Schmick).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/26/11, 2/4/11 [DPS];
General Government Appropriations & Oversight: 2/15/11, 2/18/11 [DP2S(w/o sub PSEP)].

Floor Activity:

Passed House: 3/3/11, 98-0.

Brief Summary of Engrossed Second Substitute Bill

- Makes harassment of a criminal justice participant a seriousness level III, class C felony offense.
- Makes a criminal justice participant who is a target for threats or harassment and any family members residing with him or her eligible for the Address Confidentiality Program.
- Requires the Sentencing Guidelines Commission to annually report to the Legislature on the number of prosecutions of harassment crimes against criminal justice participants under the act.
- Requires the entire act to expire on July 1, 2018.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 10 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson,

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Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

Staff: Yvonne Walker (786-7841).

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety & Emergency Preparedness. Signed by 10 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; McCune, Ranking Minority Member; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen, Van De Wege and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Assistant Ranking Minority Member.

Staff: Alex MacBain (786-7288).

Background:

Harassment.

A person commits the crime of harassment if he or she:

- without lawful authority knowingly threatens to: (a) cause bodily injury immediately or in the future to the person threatened or to any other person; (b) cause physical damage to the property of a person other than the actor; (c) subject the person threatened or any other person to physical confinement or restraint; or (d) maliciously do any other act that is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
- the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes the sending of an electronic communication.

Criminal harassment is generally a gross misdemeanor. However, the crime is a seriousness level III, class C felony offense if:

- the offender has a previous conviction for harassment or a harassment related offense against the same victim, members of the victim's family, or persons named in a no-contact or no-harassment order; or
- the offender committed the crime by threatening to kill that person or another person.

Address Confidentiality Program.

The Address Confidentiality Program (ACP) is a program that allows victims of domestic violence, sexual assault, or stalking to have an alternative address designated as his or her substitute mailing address. The ACP also allows state and local agencies to comply with requests for public records without disclosing the confidential location of a victim.

Summary of Engrossed Second Substitute Bill:

Harassment.

A person is guilty of harassment, if he or she harasses:

- a criminal justice participant who is performing his or her official duties at the time of the offense; or
- a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her duties.

The threat that a criminal justice participant receives must create a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the victim that the offender does not have the present and future ability to carry out the threat.

Harassment of a criminal justice participant is a seriousness level III, class C felony offense (a sentence of one to three months for a first-time offender).

A criminal justice participant includes any federal, state, or local law enforcement agency employee; federal, state, or local prosecuting attorney or deputy prosecuting attorney; staff member of any adult corrections institution or local adult detention facility; staff member of any juvenile corrections institution or local juvenile detention facility; community corrections officer, probation, or parole officer; member of the Indeterminate Sentence Review Board; advocate from a crime victim/witness program; or defense attorney.

Address Confidentiality Program.

A criminal justice participant who is a target for threats or harassment and any family members residing with him or her, are eligible for the ACP.

It is a class C felony offense for a person to knowingly provide false or incorrect information upon an application for the ACP stating that disclosure of the applicant's address would endanger the safety of the criminal justice participant or his/her family.

Sentencing Guidelines Commission Report.

Beginning on December 1, 2011, and annually thereafter, the Sentencing Guidelines Commission (SGC) must report to the appropriate committees of the Legislature on the number of prosecutions of harassment crimes against criminal justice participants.

Expiration of the Act.

The entire act relating to increasing the penalty for harassment of a criminal justice participant, the ACP, and the requirement of the SGC to produce an annual report on the number of prosecutions of harassment crimes against criminal justice participants, expires on July 1, 2018.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Public Safety & Emergency Preparedness):

(In support) Criminal justice participants are often harassed in retaliation for what they do every day. The bill does not create a brand new law, it enhances current law and adds to the class C felony offense of harassment. The law protects law enforcement, correctional staff, and other criminal justice staff. The prosecutors and front line staff requested this bill because they are the ones that are dealing with the person that is doing the harassing and making the threatening comments each day.

There is a statute that covers intimidating a public servant, but the problem is under that statute the threat must include an attempt to influence the actions of that officer. There are concerns over how that law can be interpreted. Courts have ruled that verbal threats are not an attempt to influence an officer.

People become officers to help contribute to the betterment of the community. They should not have to deal with threats as if it is part of the territory of the job. Over the last couple of years there has been an increase of assaults against police officers. Many of the threats that are made are solely to intimidate the officer. Police officers need the same protection as judges.

(In support with amendment) This is a good bill, however an amendment should be made to include advocates from a crime victim/witness program.

(Opposed) We should not make a gross misdemeanor offense a felony. There is concern making a threat against one category of individuals a gross misdemeanor, but that same threat made against another group of individuals would be a felony offense.

Although it is not a good thing, many have to realize that it is part of the job as a criminal justice participant to endure some negative speech. There is already a law that covers this type of behavior and turning this crime into a felony may not be the correct route to take. There is not only concern this covers free speech, but under this bill prosecutions may increase, thereby also causing a fiscal impact.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) This measure is about criminal justice participants that are retaliated against for doing their job. The bill enhances current law and adds to the class C felony offense of harassment.

(Opposed) This bill will expand the Address Confidentiality Program and will require additional resources in order to handle the increase. The bill expands the already vague harassment statutes that have been the subject of extensive litigation in the past and will likely be the subject of litigation if this measure is enacted.

Persons Testifying (Public Safety & Emergency Preparedness): (In support) Representative Dahlquist, prime sponsor; Mary Buchan and Ken Hollinbirg, Kennewick Police Department; and Andy Miller, Benton County Prosecutor's Office.

(In support with amendment) Karla Salp, Washington Association of Sheriffs and Police Chiefs.

(Opposed) Michael Hanbey, Washington Association of Criminal Defense Lawyers and Washington Defender Association; and Shankar Narayan, American Civil Liberties Union of Washington.

Persons Testifying (General Government Appropriations & Oversight): (In support) Tom McBride, Washington Association of Prosecuting Attorneys; and Scott Blonien, Department of Corrections.

(Opposed) Missy Deinlein, Office of the Secretary of State; and Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying (Public Safety & Emergency Preparedness): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.